

Attachment A

Report on Rubicon Trail Conditions by Monte Hendricks May 2008



This is my photo from 13 May 2008. As you can see the snow pack is receding with saturated soils with muddy conditions and increased erosion and deepening of the track due to the evident vehicle use.

Following is a photo of the area known as “Soup Bowl”. Soup Bowl is an **off trail** obstacle that 4x4 users attempt to climb and the resulting resource damage in this area is appalling. You ought to see it firsthand to experience the full scope of the devastation resulting from OHV play behaviors .



Here is a user posted photo from last weekend (May 17-18, 2008) at “Soup Bowl”.



The water flowing out of the ice chest gives graphic evidence of what also happens with engine coolants, oils, power steering fluids, and gasoline in a rollover.

Back to my photos from May 13. Here is an example of the oily sheen visible in many places in the water on the trail.



What is missing from a photo is the ability to stick your finger into this stuff and feel it and smell it. It is oily, smells like, and is obviously a petroleum product from a vehicle.

Conclusions

Memorial Day Weekend is coming up and the Rubicon Trail will experience heavy use at a time when the trail should be closed due to wet conditions..

On the Internet the 4x4 users are posting plans for their trips this coming holiday weekend. Here is just one example –

“we’ll be out there with a pretty good size group, i lost count at 42 rigs. you won’t be able to miss us.”

Where will this group camp?

“majority of the group will be hitting the trail friday morning, the rest of us will be coming in either friday night or saturday morning. we actually won’t all be meeting until saturday evening at buck island. we’ll move out of the way for people who want to go by. should be a great weekend”

Buck Island Lake is on Eldorado National Forest land and this is the management guidelines:

“The Forest Plan land allocation for the area of the Rubicon Trail is mostly Semi-primitive Motorized High Country (Management Area 7), with a very minor amount of Roaded Natural High Country (Management Area 8). For MA 7, the recreation objectives state: Provide for low concentrations of use. Concentrations of users are low, but there is often evidence of other users. Capacity ranges from .008 to .083 persons at one time (P AOT) per acre. Limit development to small primitive sites, using native materials that blend with the environment. Recreation development would be Level II, or two sites per acre.” Current use on the Trail far exceeds the Forest’s management guidelines.

And remember, El Dorado County killed the development of a Rubicon Trail Master Plan that could have addressed these problems.

Fair Use Disclaimer

The “Fair use” doctrine is codified in the Copyright Act of 1976 and states in part: “... the fair use of a copyrighted work ... for purposes such as criticism, comment, news reporting, teaching, scholarship, or research, is not an infringement of copyright.”¹ The doctrine recognizes that there are circumstances in which the Act’s goals of encouraging creative and original work are better served by allowing the use of copyrighted work than prohibiting such use.² Thus, the doctrine provides an affirmative defense to claims of copyright infringement and creates a limited privilege to use the copyrighted materials in a reasonable manner and without the owner’s consent.³ The scope of the fair use doctrine is wider when use relates to issues of public concern.⁴ A copyrighted work is fair use, if the public interest in free flow of information outweighs the copyright holder’s interest in exclusive control over his/her work.⁵ The statutory criteria for fair use and the statutory fair use exception in general were intended by Congress to codify, not to supercede, the common law doctrine of fair use.⁶ One of the most important factor in determining whether use of copyrighted work is fair is whether use tends to interfere with sales of the copyrighted material.⁷ Other factors include the purpose and character of use, the nature of the copyrighted material, and the amount and substantiality of material used in relation to copyrighted work as a whole.⁸

¹ 17 USCA § 107.

² *Robinson v. Random House, Inc.*, 877 F.Supp. 830, 840 (1995).

³ *Id.*, *Fisher v. Dees*, 794 F. 2d 432, 435 (1986).

⁴ *National Rifle Ass’n of America v. Handgun Control Federation of Ohio*, 15 F.3d 559, 562 (1994). See also, *Consumers Union of United States, Inc. v. General Signal Corp.*, 724 F.2d 1044 (1983).

⁵ *Lamb v. Starks*, 949 F.Supp. 753, 757 (1996).

⁶ *Elsmere Music, Inc. v. National Broadcasting Co., Inc.*, 482 F.Supp. 741, 745 (1980).

⁷ *Amsinck v. Columbia Pictures Industries, Inc.*, 862 F.Supp. 1044, 1048 (1994). See also, *Love v. Kwitny*, 706 F.Supp. 1123 (1989) (effect of use upon the potential market for or value of the copyrighted work); *National Rifle Ass’n of America*, supra (effect of use upon potential market for or value of copyrighted work).

⁸ 17 USCA § 107; *Metro-Goldwyn-Mayer, Inc. v. American Honda Motor Co., Inc.*, 900 F.Supp. 1287, 1299, 1300 (1995). See also, *Lewis Galoob Toys, Inc. v. Nintendo of America, Inc.*, 780 F.Supp. 1283 (1991); *Twin Peaks Productions, Inc. v. Publications Intern. Ltd.*, 996 F.2d 1366 (1993). See also, *CSM Investors, Inc. v. Everest Development, Ltd.*, 840 F.Supp. 1304 (1994); *American Geophysical Union v. Texaco Inc.*, 802 F.Supp. 1 (1992).